IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition No. 192 of 1995

Kothari Products Ltd. .. Petitioners.
V/s.
Vikram S/o Sumant Desai & Ors. .. Respondents.

Mr. J. Reis with Mr. Jaydeep Mitra and Mr. V. Kanoja i/b. M/s. Kaushik & Kothari for the Petitioners.
None present for the Respondents.

CORAM : S. RADHAKRISHNAN &
S.A. BOBDE, JJ.
DATED : 14.10.2004.

P.C.:-

1. By this Petition, the Petitioners are challenging the order dated 21.10.1994 passed by the President and Member of the Consumer Disputes Redressal Commission, Maharashtra State, whereby the said Commission had passed an ex-parte order allowing the complaint and directed the Petitioners to pay the complainant-Respondent No. 1 herein, a sum of Rs. 20,00,000/- (Rs. Twenty Lakhs Only) towards compensation.

2. An Affidavit in Reply was filed by the Respondent No. 1, however, no-one has been appearing on behalf of the Respondent No. 1, when the matter was called out on 19.8.2004, again when the matter was called out on 25.8.2004, the same was further adjourned to 22.9.2004 on which date also no-one was present for the Respondent No. 1. Again it was adjourned to 8.10.2004, on which

day also no-one was present and it is adjourned to today. Today, again no-one is present on behalf of the Respondent No. 1. In view thereof, we are proceeding with the matter in the absence of the Respondent No. 1 or his learned counsel.

3. It appears that the Respondent No. 1 had filed a complaint before the aforesaid Consumer Disputes Redressal Commission, Maharashtra State, being complaint No. 87 of 1994, claiming a sum of Rs. 20,00,000/- by way of damages, as the Respondent No. 1 was affected by consuming 'Pan Parag' manufactured by the Petitioners. From the averments in the Petition, it is clear that the Petitioners were served with the notice with regard to the aforesaid complaint filed before the said Commission. The said notice dated 25.4.1994 mentions that the matter will be taken on 8.6.1994. It appears on that day, the learned Advocate for the Petitioners had appeared before the said Commission to file Vakalatnama, but unfortunately on 8.6.1994, the said Commission was not sitting and as such the Clerk of the said Consumer Disputes Redressal Commission appears to have informed that the Vakalatnama can be filed on the next occasion, when the matter will be taken up. The Petitioners and their Advocate waited for a fresh intimation of the date of hearing, later came to know on 22.11.1994 that the said Commission has passed an ex-parte order on 21.10.1994, directing the Petitioners

to pay damages of Rs. 20,00,000/- to the Respondent No. 1.

4. It is the case of the Petitioners that the Respondent No. 1 had in fact already filed a Suit in this Court, being Suit No. 1377 of 1991 with regard to the very same cause of action, claiming the very same amount of Rs. 20,00,000/-, making almost similar averments. It appears that the said Suit was already on the file of this Court, when the above complaint was filed before the aforesaid Consumer Disputes Redressal Commission. It appears that the said complaint was filed before the said Consumer Disputes Redressal Commission on 4.4.1994. Subsequently, it appears that on 27.4.1994, the Suit filed in this Court being Suit No. 1377 of 1991 was withdrawn by the Respondent No. 1.

5. The main grievance of the Petitioner is that they were totally un-aware after 8.6.1994, about the dates of hearing and they were not served with the notice of hearing and the Petitioners could not file their written statement before the said Consumer Disputes Redressal Commission. Shri Reis, the learned counsel appearing on behalf of the Petitioner also pointed out that infact the very complaint No. 87 of 1994 could not have been entertained by the said Consumer Disputes Redressal

Commission in view of Section 3 of the Consumer Protection Act, 1986, since already on 4.4.1994, when the above complaint was filed, the aforesaid Suit No. 1377 of 1991 was pending in this Court and which was withdrawn only subsequently on 27.4.1994. Therefore, the contention of Shri Reis, is that in-fact the said Commission could not have even entertained the said complaint in view of the pendancy of the Suit in this Court. Shri Reis also pointed out that the Respondent No. 1 had not even disclosed the fact of the pendancy of the Suit in this Court before the said Consumer Disputes Redressal Commission.

6. Having regard to all the facts and circumstances, specially the fact that as the Consumer Disputes Redressal Commission was not even sitting on 8.6.1994, whereas the Commission had adjourned the matter to 5.7.1994 for final hearing on the ground that the Petitioners had not filed their written statement on 8.6.1994. Shri Reis pointed out that the said Roznama could not have been entered as in-fact the Court itself was not sitting on that day, as such there is no question of the matter being adjourned to 5.7.1994 for the purpose of final hearing and recording the fact that the written statement has not been filed.

7. In any event, Shri Reis pointed out that the Respondent No. 1 himself before this Court had taken out a Notice of Motion being Notice of Motion No. 433 of 1996, wherein the Respondent No. 1 has sought a relief by consent that the order dated 21.10.1994 passed by the Consumer Dispute Redressal Commission be set aside and the matter be heard by the Commission on it's own merits. It appears that later on the Respondent No. 1 had sought leave of the Court and had withdrawn the aforesaid Notice of Motion No. 433 of 1996 on 31.1.1997.

8. Having regard to all the aforesaid facts and circumstances, and as no-one is appearing on behalf of the Respondent No. 1, inspite of the matter being adjourned on not less than four occasions, and also in view of the fact that as the Respondent No. 1 himself had prayed to this Court by the aforesaid Notice of Motion No. 433 of 1996 for setting aside of the aforesaid order dated 21.10.1994 passed by the Consumer Disputes Redressal Commission and to be heard by the said Commission on it's own merits, we are inclined to set aside the aforesaid order dated 21.10.1994 passed in complaint no. 87 of 1994 passed by the said Consumer Dispute Redressal Commission, Maharashtra State in the larger interests of justice and to enable the Petitioner

to file their written statement and contest the same on it's own merits in accordance with law. Accordingly, we pass the following order:-

I) The aforesaid order dated 21.10.1994 passed by the Consumer Disputes Redressal Commission is quashed and set aside and the said complaint no. 87 of 1994 is remanded back to the said Consumer Disputes Redressal Commission, State of Maharashtra for being heard strictly on it's own merits and in accordance with law.

II) The Petitioners are permitted to file their written statement in the above within a period of ten weeks from today.

III) The said Consumer Disputes Redressal Commission, Maharashtra State shall dispose of the said complaint as expeditiously as possible.

9. Rule is made absolute in the above terms. Issuance of Certified Copy expedited.

(S. RADHAKRISHNAN, J.)

(S.A. BOBDE, J.)